

7464
DECISION



R. H. Jones
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-192243

DATE: August 29, 1978

MATTER OF: The Brunton Company

DIGEST:

1. Award to lowest offeror is not precluded simply because offered price is alleged to be too low, and as result, offeror will suffer loss.
2. Protest questioning adequacy of preaward survey of awardee is not for consideration, since GAO no longer reviews affirmative determinations of responsibility unless there is showing of fraud or misapplication of definitive responsibility criteria.
3. Neither procurement laws nor regulations preclude award to prospective contractor which submits lowest offered price and technically acceptable proposal.
4. When it is clear from initial submission that protest has no legal merit, decision will be rendered without requesting report from procuring activity.

On April 20, 1978, the U.S. Army Armament Materiel Readiness Command (AACOM) issued request for proposals (RFP) DAAA09-78-R-5023 for the procurement of 9,031 M-2 compasses. Thirty-five proposals were solicited, and four offers were received. The contract was subsequently awarded to Automatics Ltd. (Automatics), which submitted the lowest offered price.

The Brunton Company (Brunton) states that it is the world's largest manufacturer of M-2 and similar commercial compasses. It has all the necessary tooling, dies, fixtures, molds, test equipment, manufacturing procedures, expertise, and experience which are required for satisfactory contract performance. Brunton contends that award of the contract to a firm which does not have similar assets indicates that the procuring activity has an alarming lack of understanding of what is required to

produce compliant M-2 compasses, and it is doubtful that such firm could meet the delivery schedule. Brunton further contends that no other firm could offer a lower price and make a profit on the contract since Brunton has all the resources for producing M-2 compasses, and it purchases component parts in large quantities.

Brunton protests in substance as follows:

1. The awardee's offered price is unrealistically low.
2. The adequacy of the preaward survey of the awardee is questionable.
3. AARCOM awarded Automatics the contract simply because it submitted the lowest offered price. Awards based strictly on price could result in the late delivery of noncompliant compasses. Moreover, such awards are violative of the intent of section 1-902 (1976 ed.) of the Defense Acquisition Regulation (DAR), formerly the Armed Services Procurement Regulation. Among other things, DAR § 1-902 (1976 ed.) provides that the Government is not required to award a contract to the prospective contractor offering the lowest price, and an award based strictly on price can be false economy if the offeror does not satisfactorily perform the contract.

With regard to the first allegation, we have consistently held that award to the lowest offeror is not precluded simply because the offered price is too low, and as a result, the offeror will suffer a loss on the contract. See e.g., Universal Propulsion Co., B-186845, January 26, 1977, 77-1 CPD 59.

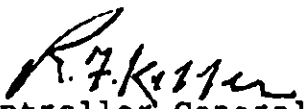
The second allegation challenges the contracting officer's affirmative determination of Automatics' responsibility. This matter will not be considered

further, since we do not review affirmative determinations of responsibility, unless there is a showing of fraud or misapplication of definitive responsibility criteria. Neither exception is relevant here. Southern Methodist University, B-197737, April 27, 1977, 77-1 CPD 289.

Finally, the third allegation provides no reason for sustaining the protest. Neither procurement laws nor regulations preclude the award to a prospective contractor which submits the lowest offered price and a technically acceptable proposal.

Because we believe that it is clear from Brunton's initial submission to our Office that the protest is without legal merit, this decision has been reached without requesting a report from the procuring activity, pursuant to our Bid Protest Procedures, 4 C.F.R. § 20.3(c) (1977). Inflated Products Company, Inc., B-190877, May 11, 1978, 78-1 CPD 362.

Accordingly, the protest is summarily denied.


Deputy Comptroller General
of the United States